

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6296

PETITION OF MICHAEL GRENDZYNSKI

(Hearing held September 9, 2009)

OPINION OF THE BOARD

(Effective date of Opinion, October 1, 2009)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b). The existing single-family dwelling requires a variance of 2.40 feet as it is within 4.60 feet of the side lot line and the petitioner proposes the construction of a second-story addition that requires a variance of 2.40 feet as it is within 4.60 feet of side lot line. The required side lot line setback is seven (7) feet.

Kevin Driscoll, an architect, represented the petitioner at the public hearing.

The subject property is Lot 26, Block 13, Kensington Park Subdivision, located at 3804 Washington Street, Kensington, Maryland, 20895, in the R-60 Zone (Tax Account No. 01018385).

Decision of the Board: Requested variance **Granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 9.6 x 28.5 foot second-story addition.
2. The petitioner testified that the existing dwelling was constructed in 1908 and that the house is currently sited in the western side yard setback. The petitioner testified that the proposed construction of a second-story addition would be built on the footprint of the existing western wall and that the proposed construction would not expand the western wall's footprint. See Exhibit No. 4 [site plan].

3. The petitioner testified that the subject property is located in the Kensington Historic District and that his house is a historic structure. The petitioner testified that in accordance with Historic Guidelines 18.1, the subject property is prohibited from building beyond the plane of the dwelling's eastern wall. See Exhibits Nos. 8 [Historic Preservation Memorandum] and 9 [Design Guidelines].
4. The petitioner testified that his house was built in three stages and that it has an architectural notch that differentiates the original portion of the house from the additions built onto the house. The petitioner testified that the Historic Preservation Commission (HPC) requires that this characteristic of the house be maintained.
5. Mr. Driscoll testified the subject property is a long, narrow lot that is 50 feet in width and that the width of the lot is substandard for the R-60 Zone. Mr. Driscoll testified that the variance request has the approval of the Town of Kensington and has received a Historic Area Work Permit from the HPC. See Exhibit Nos. 11 [zoning vicinity map] and 13 [Email from Mayor of the Town of Kensington].

FINDINGS OF THE BOARD

The Board finds that the existing single-family residence does not require a variance from the western side lot line setback. The Board notes that this finding is consistent with the policy set forth in *Section 5-114, Courts and Judicial Proceedings Article*, which bars the government from proceeding against a structure, in violation of the setback restrictions, which has been in existence for more than 3 years.

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the existing dwelling is a historic structure that was built in 1908. The Board finds that the dwelling is currently sited in the western side yard setback. The Board finds that the width of the subject property is substandard for the R-60 Zone. The Board finds that the Historic Preservation Guidelines prohibits new construction in the subject property's eastern side yard. The Board finds that these conditions are peculiar to the subject property and that the strict application of zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the construction of a second-story addition is the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction of a second-story addition will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed construction will not materially impact the view from the surrounding properties and that the proposed construction will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of to permit the construction of a second-story addition is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(h).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by David K. Perdue, seconded by Stanley B. Boyd, with Walter S. Booth, Carolyn J. Shawker and Catherine G. Titus, Chair, in agreement, the Board adopted the foregoing Resolution.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 1st day of October, 2009.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.